



Criminal Code Reform Commission  
FY 2018  
Second Quarter Report

SUBMITTED TO THE COUNCIL  
May 9, 2018

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION  
441 FOURTH STREET, NW, SUITE 1C001 SOUTH  
WASHINGTON, DC 20001  
PHONE: (202) 442-8715  
[www.ccrc.dc.gov](http://www.ccrc.dc.gov)

## PREFACE

The Criminal Code Reform Commission (CCRC) submits this quarterly report summarizing its recent activities, as required by statute.<sup>1</sup> This report concerns the second quarter of FY 2018, from January 1 through March 31, 2018. The CCRC's last quarterly report, on the first quarter of FY 2018, was submitted to the Council as part of the agency's 2017 Annual Report on January 18, 2018.<sup>2</sup>

## CCRC STATUTORY AUTHORITY

The CCRC began operation as a new, independent District agency on October 1, 2016, pursuant to the Council of the District of Columbia's Fiscal Year 2017 Budget Support Act of 2016. The CCRC is tasked with submitting to the Mayor and the Council comprehensive criminal code reform recommendations to revise the language of the District's criminal statutes within specified parameters, with a statutory deadline of October 1, 2018.<sup>3</sup> In preparing these reform recommendations, the CCRC is required to consult with a Code Revision Advisory Group (Advisory Group), a statutorily designated group of stakeholders who review and provide information and suggestions on proposals prepared by the CCRC. The Advisory Group consists of 5 voting members and 2 nonvoting members.<sup>4</sup> Approval by a majority of the Advisory Group

---

<sup>1</sup> D.C. Code Ann. § 3-154(a) ("The Commission shall file quarterly reports with the Council that provide a summary of activities during the prior quarter.").

<sup>2</sup> Available online at <http://lims.dccouncil.us/Download/39596/RC22-0127-Introduction.pdf>.

<sup>3</sup> The CCRC's mandate states:

By October 1, 2018, the Commission shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to: (1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses; (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary; and (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

D.C. Code § 3-152(a).

<sup>4</sup> The current voting members of the Advisory Group are: Don Braman, Associate Professor of Law, George Washington University School of Law (Council Appointee); Paul Butler, Professor of Law, Georgetown University Law Center (Council Appointee); Renata Kendrick Cooper, Special Counsel for Policy and Legislative Affairs, United States Attorney's Office for the District of Columbia (Designee of the United States Attorney for the District of Columbia); Laura Hankins, General Counsel, Public Defender Service for the District of Columbia (Designee of the Director of the Public Defender Service for the District of Columbia); and Dave Rosenthal, Senior Assistant Attorney General, Office of the Attorney General for the District of Columbia (Designee of the Attorney General for the District of Columbia).

The current non-voting members of the Advisory Group are: Kevin Whitfield, Policy Advisor, Committee on the Judiciary and Public Safety (Designee of the Chairperson of the Council Committee on the Judiciary and Public Safety); and Helder Gil, Legislative and Policy Advisor, Office of the City Administrator (Designee of the Deputy Mayor for Public Safety and Justice).

is required for final recommendations to be submitted to the Council and the Mayor.<sup>5</sup> In preparing its reform recommendations the CCRC also reviews criminal code reforms in other jurisdictions, changes to criminal offenses recommended by the American Law Institute, and best practices recommended by criminal law experts.<sup>6</sup>

## **NOTABLE CCRC ACTIVITIES JANUARY – MARCH 2018**

### ***Development of Reform Recommendations***

The CCRC’s work to develop recommendations for reform of District criminal statutes is guided by the Work Plan and Schedule that was first provided to the Council on February 9, 2017, as part of the agency’s 2016 Annual Report, and updated in the agency’s 2017 Annual Report. The Work Plan and Schedule divides the development of code reform recommendations under the CCRC’s statutory mandate into four Phases. The CCRC’s activities during the second quarter of FY 2018 continued its work on Phase 2 (General Provisions for a new Title 22A) and Phase 3 (Reformed Offenses for a new Title 22A) of the Work Plan and Schedule.

As part of Phase 2, the CCRC continued its development of reform recommendations to the Council and Mayor that provide a standard toolkit of rules, definitions, and principles for establishing criminal liability that will apply to all reformed offenses. Such work addresses several of the agency’s statutory mandates.<sup>7</sup> Specifically, in the second quarter, CCRC staff delivered to its Advisory Group for comment one new draft report as part of Phase 2, as follows:

- In its First Draft of Report #18, submitted for Advisory Group review on March 16, 2018, the CCRC drafted recommendations for new statutes addressing the solicitation of a crime, and a defense of renunciation to attempts, conspiracies, and solicitations. Under the draft solicitation provision, a person may be found guilty of solicitation when that person purposely commands, requests, or tries to persuade another person to engage in or aid in the planning or commission of conduct that would constitute an offense or attempted offense. This provision would replace the current penalty provision concerning solicitation of a crime of violence in D.C. Code 22-2107, which lacks a description of elements of solicitation. Under the draft renunciation defense, it would be an affirmative defense that the defendant engaged in conduct sufficient to prevent commission of the target offense under circumstances manifesting a voluntary and complete

---

<sup>5</sup> D.C. Code § 3-153(e).

<sup>6</sup> *Id.*

<sup>7</sup> D.C. Code § 3-152(a) (“(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; ...(7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; ...(10) Propose such other amendments as the Commission believes are necessary . . .”).

renunciation of criminal intent. No comparable defense is codified in the D.C. Code at present, even though such a defense is consistent with District and national legal doctrines.

In the second quarter the CCRC discussed with the Advisory Group previously circulated draft recommendations concerning Phase 2 general provisions, including: conspiracy liability,<sup>8</sup> culpable mental state definitions,<sup>9</sup> and the penalties for attempting to commit crimes.<sup>10</sup> On December 19, 2017, the Advisory Group provided written comments on the First Draft of Report #12, Definition of a Criminal Conspiracy. These written comments were discussed at the agency's February 7, 2018 meeting. On March 9, 2018 the Advisory Group provided written comments on the Third Draft of Report #2, Basic Requirements of Offense Liability, and the First Draft of Report # 13, Penalties for Criminal Attempts. Discussion of these written comments did not occur in the second quarter.

As part of Phase 3, the CCRC continued its development of reform recommendations to the Council and Mayor that concern certain common and serious offenses. Specifically, in the second quarter, CCRC staff delivered to its Advisory Group for comment two new draft reports concerning offenses against persons, as follows:

- In its First Draft of Report #19, Homicide, submitted for Advisory Group review on March 16, 2018, the CCRC drafted recommendations for new murder and manslaughter offenses. These new statutes would replace various murder statutes in the current D.C. Code,<sup>11</sup> the one penalty provision concerning manslaughter in the D.C. Code,<sup>12</sup> as well as relevant parts of various penalty enhancement provisions.<sup>13</sup>
- In its First Draft of Report 20, Abuse and Neglect of Children, Elderly, and Vulnerable Adults submitted for Advisory Group review on March 16, 2018, the CCRC drafted recommendations for new offenses targeting non-property crimes against children and vulnerable persons. These new statutes would replace various statutes in the current D.C. Code,<sup>14</sup> including the current enhancement for certain crimes committed against minors.<sup>15</sup>

In the second quarter the CCRC discussed with the Advisory Group previously circulated draft recommendations concerning Phase 3 property offenses, including: Extortion, Trespass,

---

<sup>8</sup> The CCRC issued its First Draft of Report #12, Definition of a Criminal Conspiracy, on November 6, 2017.

<sup>9</sup> The CCRC issued its Third Draft of Report #2, Basic Requirements of Offense Liability, on December 21, 2017.

<sup>10</sup> The CCRC issued its First Draft of Report# 13, Penalties for Criminal Attempts, on December 21, 2017.

<sup>11</sup> D.C. Code §§ 22-2101 – 2104.01; § 22-2106.

<sup>12</sup> D.C. Code § 22-2105.

<sup>13</sup> E.g., D.C. Code § 22-4502, Commission of a Crime While Armed.

<sup>14</sup> D.C. Code §§ 22-1101, 22-1102, 22-931 – 933; § 22-934 – 936.

<sup>15</sup> D.C. Code § 22-3611.

and Burglary,<sup>16</sup> and Property Offense Definitions, Aggregation, and Multiple Convictions.<sup>17</sup> On November 3, 2017 the Advisory Group provided written comments on these offenses, the discussion of which carried over into the second quarter.

The CCRC also discussed with the Advisory Group previously circulated draft recommendations concerning Phase 3 offenses against persons, including: Definitions applicable to Offenses Against Persons,<sup>18</sup> Assault and Offensive Physical Contact,<sup>19</sup> Robbery,<sup>20</sup> and Criminal Menace and Criminal Threat offenses.<sup>21</sup> On March 9, 2018 the Advisory Group provided written comments on these offenses against persons, however discussion of those written comments did not occur in the second quarter.

When finalized, the recommendations developed in Phases 2 and 3 of the Work Plan will be combined with later work in Phase 4, forming a single, cohesive set of reform recommendations for District crimes in a new Title 22A. The combined, final reform recommendations will be presented in the CCRC's final report to the Council and Mayor by the statutory deadline.<sup>22</sup>

#### ***Agency Administration & Other Activities***

**Data.** On February 2, 2018 the D.C. Superior Court ("Court") provided to the CCRC a corrected data set providing information on certain charging and sentencing dispositions for the time period 2010-2016. This data set was a response to the agency's September 8, 2017 request for a data set that would include important information (e.g. regarding attempted crimes) missing from the data set the Court had provided August 7, 2017. On receipt of the corrected data set, the CCRC began work to clean and analyze the data with the help of the Lab in the Office of the City Administrator. Many irregularities were found in the data that appear to be due to clerical errors, such as citations to D.C. Code statutes that do not exist or have changed over time. Staff had not completed cleaning and analysis of the data set by the end of the second quarter.

**Staffing.** In January 2018 staff attorney Bryson Nitta resigned from the CCRC to take a position in the federal government. The CCRC greatly appreciates the contributions of Mr.

---

<sup>16</sup> The CCRC issued its First Draft of Report # 11 Extortion, Trespass, and Burglary, on August 11, 2017.

<sup>17</sup> The CCRC issued its First Draft of Report # 8 Property Offense Definitions, Aggregation, and Multiple Convictions, on August 11, 2017.

<sup>18</sup> The CCRC issued its First Draft of Report #14, Definitions for Offenses Against Person, on December 21, 2017.

<sup>19</sup> The CCRC issued its First Draft of Report #15, Assault and Offensive Physical Contact Offenses, on December 21, 2017.

<sup>20</sup> The CCRC issued its First Draft of Report #16, Robbery, on December 21, 2017.

<sup>21</sup> The CCRC issued its First Draft of Report #17, Criminal Menace and Criminal Threat Offenses, on December 21, 2017.

<sup>22</sup> Pending Council legislation would extend the CCRC's statutory funding and authorization one year, to September 30, 2019. See B22-0754 - Fiscal Year 2019 Local Budget Act of 2018, and B22-0753 - Fiscal Year 2019 Budget Support Act of 2018. If such an extension occurs, the agency will create a new Work Plan and Schedule to include development of a wider array of reform recommendations and to optimize efficiency.

Nitta. Hiring to backfill the vacancy began immediately, and as of March 31 an offer had been extended and accepted by a local attorney. The new attorney was scheduled to begin employment with the CCRC in early April 2018. Given the CCRC's small (five person) staff, the loss of one person for several months caused a significant slowdown in the agency's work during the second quarter. Training of the new staff attorney in the third quarter, and the loss of Mr. Nitta's unique knowledge of some areas of District law are expected to cause residual delays going forward.

***Council Oversight.*** On February 15, 2018 the CCRC Executive Director testified before the Committee on the Judiciary and Public Safety as part of the regular performance oversight hearings on District agencies.

***Community Outreach.*** On January 11, 2018 the CCRC Executive Director gave a public presentation at the John A. Wilson building on design flaws in the current D.C. Code as part of a series of talks hosted by the Lab in the Office of the City Administrator. Staff of several Councilmembers and other District officials were in attendance. The presentation was followed by an audience question and answer period, and an interview that was the basis for an episode of the Podcast @ DC.<sup>23</sup>

## CONCLUSION

The CCRC's work in the second quarter of FY 2018 focused primarily on preparation and issuance to its Advisory Group of first draft recommendations for several new offenses against persons that would replace existing statutes. These offenses against persons include common and serious crimes such as: murder, manslaughter, child abuse, and child neglect. Staff also discussed Advisory Group written comments on conspiracy liability and issued draft recommendations for statutory provisions regarding solicitation and renunciation of a criminal offense. In total, staff issued 3 new draft reports to the Advisory Group containing draft reform recommendations, and the Advisory Group met three times during the second quarter to discuss new and previously circulated draft recommendation.

Pursuant to its earlier data request, in February 2018 the agency also received a corrected Superior Court data set on adult offenses with a disposition date during the years 2010-2016. Working with the Lab in the Office of the City Administrator, the agency was engaged in cleaning and analyzing the data set in the second quarter.

All agency draft recommendations, as well as minutes for the agency's Advisory Group meetings are available on the CCRC website at [www.ccrcc.dc.gov](http://www.ccrcc.dc.gov). For additional details or questions about the CCRC's activities or operation, please contact the agency's Executive Director, Richard Schmechel.

---

<sup>23</sup> <https://soundcloud.com/user-768286365>